

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule LSA Document #09-

DIGEST

Amends 312 IAC 11 governing public freshwater lakes to define and establish standards for a general license to place an aerator. Clarifies that an aerator which is not authorized by a general license must not be placed in a public freshwater lake except upon a person's prior receipt of an individual license. Amends provisions addressing the administrative review of general licenses to include general licenses for the placement and maintenance of an aerator. Removes the requirement of participation in mediation if all parties agree not to participate. Incorporates by reference a nonrule policy document which provides guidance for the identification of riparian zones. Makes other technical changes. Effective 30 days after filing with the Publisher.

312 IAC 11-1-4; 312 IAC 11-2-1.5; 312 IAC 11-3-1.2; 312 IAC 11-3-2

SECTION 1. 312 IAC 11-1-4 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-1-4 Determination of riparian zones

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-8; IC 14-15; IC 14-26-2

Sec. 4. If a determination of riparian boundaries is reasonably required for the performance of functions under IC 14-26-2 and 312 IAC 11-1 through 312 IAC 11-5, the department (or the commission on administrative review) shall consider as guidance “Riparian Zones within Public Freshwater Lakes and Navigable Waters”, as published by the Legislative Services Agency at DIN: 20081210-IR-312080891NRA (December 10, 2008). (*Natural Resources Commission*; 312 IAC 11-1-4)

SECTION 2. 312 IAC 11-2-1.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-2-1.5 “Aerator” defined

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-8; IC 14-15; IC 14-26-2

Sec. 1.5 “Aerator” means a mechanical device placed within a public freshwater lake that is used to accomplish any of the following:

- (1) Increase the amount of dissolved oxygen in the water.**
- (2) Increase the decomposition of organic materials.**
- (3) Alter water flow or circulation.**
- (4) Reduce icing.**

(5) Enhance audio or visual enjoyment by bubbling or spraying water.
(*Natural Resources Commission; 312 IAC 11-2-1.5*)

SECTION 3. 312 IAC 11-3-1.2 IS ADDED TO READ AS FOLLOWS:

312 IAC 11-3-1.2 General licenses for aerators

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 14-15; IC 14-26-2

Sec. 1.2 (a) This section establishes terms for a general license to place and maintain an aerator.

(b) A person who acts under this section is not required to complete an application or to obtain a written license from the department under IC 14-26-2 and this rule. A person who wishes to place or maintain an aerator, which does not qualify under this section, must obtain a written license in advance of placement.

(c) To qualify for the general license, a person must satisfy each of the following requirements:

(1) Limit operation of the aerator to March through October.

(2) For March, post and maintain a sign at the site of the aerator which does each of the following:

(A) States “beware thin ice” in black lettering clearly visible to an approaching person.

(B) Includes a standard illustration in black for thin ice, upon a reflective yellow background, within a black triangle.

(C) Substantially conforms to the following illustration:



(3) Limit the effects of the aerator to a distance which does not:

(A) exceed one hundred fifty (150) feet from the shoreline or water line of the public freshwater lake; or

(B) extend beyond the boundaries of the person’s riparian zone.

(4) Operate the aerator to accomplish both of the following:

(A) minimize the disturbance of bottom sediments; and

(B) not diminish water clarity.

(5) Operate the aerator so it does not unduly infringe on the recreational usage of the lake by adjacent landowners or the public.

(6) Operate the aerator so that it does not remove more than six hundred twenty-five (625) square feet of aquatic vegetation.

- (7) Cause the aerator to be the following:
 (A) readily inoperable or removable.
 (B) secure from movement caused by water currents, wind, or similar factors. (*Natural Resources Commission; 312 IAC 11-3-1.2*)

SECTION 4. 312 IAC 11-3-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 11-3-2 Disputes regarding a structure placed under authority of a general license

Authority: IC 14-10-2-4; IC 14-15-7-3; IC 14-26-2-23

Affected: IC 4-21.5; IC 14-15; IC 14-26-2

Sec. 2. (a) A person may seek administrative review of the placement or maintenance of a ~~temporary structure or a dry hydrant, or a glacial stone reface,~~ under section 1 **or section 1.2** of this rule.

(b) Administrative review under this section is subject to IC 4-21.5 and 312 IAC 3-1. If a dispute involves the placement of a pier, another temporary structure, or a glacial stone reface, where the review of another structure authorized by a general license appears appropriate to a full and fair determination of the dispute, the administrative law judge may order additional parties joined.

(c) The administrative law judge shall commit the matter to mediation under 312 IAC 11-1-3 as soon as practicable. Except as otherwise provided in this subsection, no administrative review brought under this section shall proceed to formal discovery or to a hearing without the completion of at least two (2) mediation sessions. A mediation session is not required to be scheduled where either:

(1) all parties agree **during a prehearing conference, during a status conference, or** in writing, not to participate in mediation; or

(2) a party is dismissed or defaulted under 312 IAC 3-1-9(a), 312 IAC 3-1-9(b)(1), or 312 IAC 3-1-9(b)(2).

(d) Unless otherwise ordered by the administrative law judge or agreed in writing by all the parties, any structure placed by a party under section 1 of this rule must be removed from ~~within areas~~ along or lakeward of the ~~waterline or shoreline~~ **or water line** upon the later of the following:

(1) Ninety (90) days after filing of the request for administrative review.

(2) January 1 of the year following the filing of the request for administrative review.

(e) In exercising discretion under subsection (d), an administrative law judge shall consider whether the structure poses a substantial intrusion or merely a de minimis intrusion to the interests protected by IC 14-26-2, IC 14-15-7-3, and this rule. (*Natural Resources Commission; 312 IAC 11-3-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2224; filed Jan 23, 2001, 10:05 a.m.: 24 IR 1615; filed Jun 21, 2001, 3:03 p.m.: 24 IR 3374; readopted filed Aug 4, 2005, 6:00 p.m.: 28 IR 3661*)